IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

OP.No. 30509 of 1999(F)

PETITIONER:

VIKRANT TYRES LIMITED, ST. VINCENT ROAD, COCHIN 682 018
REPRESENTED BY ITS DEPUTY MANAGER (OPERATIONS) SRI.N. SURENDRA BABU

BY ADV. SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, TO THE GOVT. OF KERALA, GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM

2. THE ASST. COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE, ERNAKULAM, COCHIN 682 015

3. THE SPECIAL TAHSILDAR, REVENUE RECOVERY, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 51981 OF 1999 IN OP 30509 OF 1999

DISMISSED

19.12.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS: nIL

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 30509 OF 1999

Dated this the 19th day of December, 2007

JUDGMENT

Petitioner is a public limited company which was in arrears of sales tax for the assessment years 1984-85 to 1987-88. For default in payment of sales tax, petitioner was liable to pay interest under Section 23(3) of the KGST Act. However, Section 23A(1) introduced to the Act provides for 60% waiver of interest to dealers " other than a company not being a small scale industrial unit or a works contractor referred to in sub-section (7AAAA) of section 7". Petitioner's grievance is that denial of Amnesty benefit in the form of grant of reduction of interest to public limited companies is arbitrary, discriminatory and violative of Art. 14 of the Constitution of India. O.P. is filed seeking the following reliefs:

> (i) to issue an appropriate writ or order declaring that part of Section 23A(1) reading "other than a company not being; a small scale industrial unit or a works contract referred to in sub-section (7AAAA) of Section 7" as unconstitutional, void and of no effect.
>
> (ii) to issue a ;writ of mandamus or other appropriate ;writ

> or direction to the respondents to grant or extend the benefit of reduction of 60% of the amount of sinterest accrued on the tax for the assessment years 1984-85, 1985-86 1986-87 and 1987-88 pending in dispute before the Kerala Sales Tax Appellate Tribunal.
>
> (iii) to issue a writ of mandamus or other appropriate writ or order restraining the respondents frosm taking any coercive action or revenue recovery proceedings for recovery of the disputed interest;
>
> (iv) to grant interest or other reliefs as may deemed just and necessary by this Honourable Court."

2. I have heard senior counsel Sri. Pathros Matthai appearing for the petitioner and Government Pleader appearing for the respondents. Counsel for the petitioner has relied on the decisions of the Supreme Court in STATE OF KARNATAKA V. M/S. HANSA CORPORATION, (1980) 4 SCC 697, KERALA HOTEL & RESTAURANT ASSN. V. STATE OF KERALA, 77 STC 253,FEDERATION OF HOTEL & RESTAURANT ASSN. OF INDIA V.UNION OF INDIA, 74 STC 102, ELEL HOTELS AND INVESTMENTS LTD. V. UNION OF INDIA, 74 STC 146, and KHADI & VILLAGE SOAP INDUSTRIES ASSN. v. STATE OF HARYANA, 95 STC 355, and contended that the provision to the

extent indicated in relief (i) above is discriminatory and liable to be interfered with. Government Pleader on the other hand contended that petitioner does not belong to class of "other dealers" who are granted the benefit of reduction of 60% of interest and consequently the legislation does not suffer from any infirmity hit by Art. 14 of the Constitution of India.

3. Even though the decisions relied on by counsel for the petitioner are not exactly on the facts of this case, the principle laid down by the Supreme Court is uniform. The test to be applied is whether there is intelligible differentia between those grouped together and those left out and whether the classification so made has a rational nexus to the object sought to be achieved. In this case, the classification is between companies on the one side and "other dealers" under the KGST Act including small scale industrial units, and works contractors, on the other side. So far as the petitioner is concerned, petitioner is a public limited company whose business operations spread across the country. However, small scale industrial units whether owned by companies or not are noway comparable with large industrial companies like the petitioner. Therefore I notice that there is

a reasonable difference between the companies on the one hand and small scale industrial units on the other, whether run by companies or not. The "other dealers" covered by the Act who are entitled to rebate of interest are proprietorship concerns, owned by individuals, partnership firms, etc. Companies are formed under the Companies Act and they are subject to strict discipline in regard to maintenance and auditing of accounts, holding of shareholders' meetings, etc. Most of the companies like the petitioner are professionally managed and therefore legal compliance under the Act are expected from such companies. In fact any violation of statutory provision does not entitle any benefit to the employees in management of the company and consequently employees have no justification to commit violation of statutory provisions. Therefore I am of the view that companies are not comparable with individuals or partnership firms or the like. The object of the amendment in granting reduction of interest is to recover the entire arrears of tax with balance interest. If companies do not make payment, so many remedies are available including winding up. Moreover the object of legislation is not to take lightly the non-compliance of statutory provisions in regard to payment of tax by

professionally managed companies. Therefore I do not find companies like the petitioner are comparable with other dealers and so much so the classification cannot be said to be arbitrary. The twin tests for validity of statute under various decisions of the Supreme Court are satisfied in this case because the incentive offered is to recover tax from individuals, partnership firms, etc., and so far as companies are concerned, Government expects statutory compliance and for inforcement they do not give any incentive. Besides this, it is to be noted that statutory provision remains unchallenged by other companies though large number of companies are similarly aggrieved like the petitioner in regard to impugned legislation. Therefore I uphold the statutory provision and dismiss the O.P. However, this does not bar the petitioner from claiming consequential benefits in the form of reduction if tax gets reduced in appeal.

(C.N. RAMACHANDRAN NAIR)
Judge

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